

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

RECEIVED

JUN 27 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of the)
Cable Television Consumer)
Protection and Competition)
Act of 1992)
)
Broadcast Signal)

MM Docket No. 92-259

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

RECEIVED

MM

A broadcast station which invokes must carry but is distant for copyright purposes will either be a "permitted" or a penalty (3.75%) signal. In this example, if the distant must carry station were a permitted signal, the incremental copyright fee would be .563% of gross receipts, which represents the fee associated with the third distant signal. If the distant must carry station were a penalty signal, the incremental copyright fee would be 3.75% of gross receipts. In the latter case, the incremental copyright fee also represents the fee associated with the third distant signal, but that fee is much higher because of its penalty status under the copyright law.

It is clear that Congress intended that broadcasters pay their fair share. The FCC's Report and Order and the 1992 Act at Section 614(b)(10)(B) refers to the "increased copyright liability resulting from carriage of such signal". Further, the Commission states in its Report and Order that "if a station requesting must carry status is the third distant signal carried by the system, it may have to indemnify the cable system for the difference in copyright liability between carriage of two and three distant signals".

Despite this clear directive, some broadcasters appear to be confused regarding how to calculate incremental copyright fees. For example, at the April 1993 NAB convention, a paper entitled "A Few Practical Pointers on Negotiating Cable Copyright

Fees" discussing the complexity of the situation stated as follows:

"....the amount considered to have been paid for a particular signal may vary significantly depending on whether it is considered one of the first or one of the last signals added. This is because the royalty rate per signal drops as the total number of distant signals carried becomes greater. The system is not required to list the signals in any particular order on its SOA and might be expected to claim that the new must carry signal would be subject to the highest rate. This

II. OTHER COPYRIGHT ROYALTY REIMBURSEMENT PROCEDURES

NAB argues at pp. 9-10 of its Petition that cable operators should be required to provide broadcasters with notice in advance of various changes that could result in an increase in the copyright royalty payments and that such information should be provided prior to the broadcaster entering into an indemnification agreement. NAB's suggestion is totally impractical. There are numerous changes which are simply not predictable and may not be within the control of the cable operator, e.g. changes in television markets, changes in cable system gross receipts, changes in signal carriage, forced rate changes and restructuring due to regulation, etc. This is particularly true at this time when there is uncertainty and confusion for many cable operators regarding what signals will be carried as "must carry" signals or dropped due to retransmission consent requirements. The Commission can certainly require all parties to proceed with negotiating indemnification agreements in good faith, but because of the regulatory uncertainty on so many issues relating to future copyright payments, as well as the complexity of the copyright payment calculations, there will remain some degree of risk and unpredictability regarding copyright payments. Under the requirements of the 1992 Cable Act, the broadcaster is responsible for the additional copyright payments and accordingly must bear the risk of any uncertainty regarding the amount of that payment.


NAB also argues that the broadcaster should not be

available on the FM dial in a particular market. The result of requiring retransmission consent for radio stations is that radio stations will simply be dropped from cable systems and the public will lose the service. Such an adverse result was certainly never intended by Congress and is inconsistent with the public interest.

Respectfully submitted,

UNITED VIDEO, INC.

By


Jeff Freeman
President

June 7, 1993